

CALIFORNIA COASTAL COMMISSION

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Thu 15b

Staff: LRO-SD
Staff Report: 9/27/01
Hearing Date: 10/9-12/01

STAFF REPORT AND RECOMMENDATION ON APPEAL

Application No.: A-6-LJS-01-95

Applicant: Ure R. & Diane M. Kretowicz

Agent: Matt Peterson

Description: Removal of unpermitted improvements on face of coastal bluff and construction of pool with spa, concrete deck, retaining walls, drains, landscaping and dedication of an emergency access easement along southern edge of 1.31 acre blufftop lot containing a single family residence.

Site: 7957 Princess Street, La Jolla, San Diego, San Diego County.
APN 350-151-01 & -02

STAFF NOTES:

At its August 6, 2001 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. This report represents the de novo staff recommendation.

Summary of Staff's Recommendation:

Staff recommends that the Commission deny the proposed development as it is inconsistent with several provisions of the certified LCP related to blufftop setbacks, geologic hazards, protection of views from public vantage points and scenic areas, and public access. The proposed development includes the construction of a swimming pool and spa and a 9-12 ft. high retaining wall to support these structures seaward of the residence on the face of a coastal bluff. While the City of San Diego delineated this area as a "coastal canyon", staff has determined that the area of the site where the improvements are proposed is subject to marine erosion at its toe and, as such, has concluded that it be delineated as a "coastal bluff"—not a "coastal canyon". The certified LCP does not permit swimming pools or spas on the face of the bluff, and in fact, requires they be sited a minimum distance of 25 ft. from the edge of the bluff. Thus, the proposed swimming pool and spa, which are proposed on the face of the bluff are not permitted. In addition, the proposed pool and spa on the face of the bluff would result in a structure that, even if screened with landscaping, will be highly visible from a number of off-site public areas. Another issue raised by the subject development is that it is inconsistent with conditions of approval of a previous coastal development permit (#F6760) for the subject site which required recordation of an offer for a public vertical

access easement. While the development was completed, the easement was never recorded, in apparent violation of the previous permit. The proposed development will encroach into the area required for public access.

Substantive File Documents: Appeal Forms; Certified La Jolla-La Jolla Shores LCP Land Use Plan; Certified City of San Diego LCP Implementation Plan; City of San Diego Report to the Planning Commission dated 2/7/01; City of San Diego Manager's Report dated 5/30/01; Negative Declaration for Kretowicz Rear Yard Landscaping dated 12/21/00; Update of Geologic Reports dated August 9, 1997 by Michael W. Hart; CDP Nos. F5265, F6760, F-6760-A, 221-78 (appeal), A-133-79; Staff Report and Recommendation on Appeal – Substantial Issue, dated 7/17/01.

I. PRELIMINARY STAFF RECOMMENDATION:

MOTION: *I move that the Commission approve Coastal Development Permit No. A-6-LJS-01-95 for the development proposed by the applicant.*

STAFF RECOMMENDATION OF DENIAL:

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY THE PERMIT:

The Commission hereby denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP and the public access policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description/History. The subject development approved by the City involves the construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of a blufftop site that contains an existing single-family residence. The proposal also includes removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm

trees) on the face of the coastal bluff. No changes to the existing single-family residential structure are proposed.

The 1.31 acre site is situated atop a 55-ft. high coastal bluff located off a cul-de-sac at the northern terminus of Princess Street in the La Jolla community of the City of San Diego. The existing residence is situated on flatter portion of the site, directly adjacent to Princess Street, with the site sloping steeply from the home to the north and west. There is no existing shoreline or bluff protection on the subject site. Surrounding development includes single family homes to the east and south and the Pacific Ocean to the north and west.

The home on the site was originally constructed around 1915. Over the years, the home was added to and remodeled several times. In June of 1977, the Regional Commission denied an application (F5265) for a substantial addition (3,300 sq. ft.) to the 1,350 sq. ft. home on the site finding that the development would have a significant adverse impact on scenic resources in the area as it would significantly encroach onto the visually prominent bluff seaward of the existing home.

In June of 1978, the Regional Commission approved CDP #F6760 for construction of a 3,066 sq. ft. addition to the existing 1,350 sq. ft. single-family residence finding that this "scaled-back" version of the previous application did not project further seaward than the existing line of development, thereby reducing its impact on visual resources. The permit was approved with special conditions requiring that the development comply with the recommendations of the geology report, that the southwest corner of the proposed addition (15 ft. x 15 ft.) be cantilevered to "ensure the integrity of the slope", and that the final drainage plans be submitted. The decision on this matter was appealed to the State Commission (A-221-78) which found no substantial issue on July 18, 1978. The applicant subsequently complied with the conditions and commenced development.

A lawsuit was then filed against the Commission for not having made adequate findings regarding public access and recreation as required by Section 30604 of the Coastal Act for development located between the first public road and the sea. The court subsequently found that the development was located between the first public road and the sea and that the finding on public access and recreation was not sufficiently specific to comply with the requirements of Section 30604(c) of the Act. The court ordered that the matter be remanded back to the regional commission for a specific finding on only the issue of public access and recreation. The Regional Commission subsequently adopted findings regarding public access and recreation with no special requirements for the provision of public access at the site. This decision was then appealed to the State Commission (A-133-79). On September 20, 1979, the State Commission found that public access should be required and imposed a special condition requiring the applicant to record both lateral (from the toe of the bluff to the mean high tide line) and vertical (5 ft. wide extending from street down bluff along southern property line) public access easements. However, the access easements were never recorded and the addition was completed pursuant to the previously issued permit, in apparent violation of the Commission's action.

Then, in 1980, the applicant requested and received approval of an amendment to the original permit (#F6760-A) to revise the approved drainage plan which had already been constructed without authorization.

The standard of review for the proposed development is the City's certified La Jolla-La Jolla Shores Land Use Plan (LUP) and the former implementation plan (municipal code) that was in effect at the time that the proposed development was reviewed and accepted for filing by the City. The City of San Diego recently received effective certification of an LCP amendment that replaces its former municipal code with its new Land Development Code (LDC). The LDC became effective on January 1, 2000. However, the amendment was submitted with a provision that the prior municipal code would continue to be applied to projects for which complete permit applications were submitted prior to the effective date of the LCP amendment. The subject proposal was submitted to and found complete by the City prior to the effective date of the LDC. The Commission finds that in this case, the appropriated standard of review is the LCP that was in effect prior to the effective date of the LCP amendment, the former municipal code, and the public access policies of the Coastal Act.

2. Shoreline Hazards/Alteration of Landforms/Scenic Quality. The proposed development involves the removal of a number of existing unpermitted improvements (wooden timber stairs, retaining walls and palm trees) on the face of the coastal bluff and construction of a pool with spa, a concrete deck, barbecue counter, retaining walls, drains and landscaping in the rear yard of a single-family residence. The location of the subject site where the proposed pool and spa are to be located is seaward of the residence on a very steeply sloping portion of the site. The pool will be cut into the slope and then supported by an approximately 9-12 ft. high retaining wall on the western facing portion of the slope (ref. Exhibit #2).

The proposed development raises several concerns related to the shoreline hazards provisions of the certified LCP as they relate to blufftop setbacks and alteration of natural landforms. Specifically, applicable provisions of the La Jolla-La Jolla Shores LCP Land Use Plan are as follows:

Coastal Bluff Top Development.

The shoreline bluffs are one of La Jolla's most scenic natural resources. Beautiful in themselves, the bluffs provide magnificent vistas of the ocean and shoreline. Understandably, these same qualities provide a tremendous incentive to develop bluff top property. Such development, however, is not without its risks. As indicated on the geologic hazards map (page 108), many of the bluff areas are unstable and prone to landslides. Over time, as the bluffs continue to recede, existing developments will become increasingly susceptible to bluff hazards. In many cases, seawalls, revetments, and other types of erosion structures will be required to stabilize the bluff. Such structures, while necessary to protect private property, are poor substitutes for adequate site planning. Improperly placed structures may accelerate

erosion on adjacent properties and seriously impact lateral public access. The proliferation of such structures may cumulatively degrade the natural scenic quality of the bluffs and interfere with nature shoreline processes. Where large comprehensive structures such as breakwaters, groins, or revetments are required, the public may ultimately bear the costs. [p. 109]

In order to reduce such problems in the future, the following guidelines have been recommended for all bluff top development located between the first through coastal roadway and the ocean. The guidelines are to be applied to all bluffs having a vertical relief of ten feet or greater and whose toe is or may be subject to marine erosion.... [p. 109] [Emphasis added]

The City's former implementation plan (municipal code), which is the standard of review for the subject project defines a coastal bluff as follows:

3. Coastal Bluff. Within the Coastal Zone, an escarpment or steep face of rock, decomposed rock, sediment, or soil resulting from erosion, faulting, folding, or excavation of the land mass. It may be flat, curved, or steplike. For the purposes of these regulations, a coastal bluff is limited to those features having vertical relief of ten (10) feet or more. [...]

In addition, the Commission has used the following to identify coastal bluffs:

CCR California Code of Regulations, Title 14, Section 13577(h)(1) & (2)

- (1) those bluffs, the toe of which is now or was historically (generally within the last 200 years) subject to marine erosion; and

- (2) those bluffs, the toe of which is not now or was not historically subject to marine erosion, but the toe of which lies within an area otherwise identified in Public Resources Code Section 30603(a)(1) or (a)(2).

Bluff edge or edge shall be defined as the upper termination of a bluff, cliff or seacliff. In cases where the edge of the cliff is rounded away from the face of the cliff as a result of erosional processes related to the presence of the steep cliff face, the bluff line or edge shall be defined as that point nearest the cliff beyond which the downward gradient of the surface increases more or less continuously until it reaches the general gradient of the cliff. In a case where there is a steplike feature at the top of the cliff face, the landward edge of the topmost riser shall be taken to be the cliff edge. The termini of the bluff line, or edge along the seaward face of the bluff shall be defined as a point reached by bisecting the angle formed by a line coinciding with the general trend of the bluff line along the seaward face of the bluff, and line coinciding with the general trend of the bluff line along the inland facing portion of the bluff. Five hundred feet shall be the minimum length of bluff line or edge to be used in making these determinations. [emphasis added]

Continuing with the above-referenced guidelines for blufftop development contained in the certified La Jolla-La Jolla Shores LCP Land Use Plan, the document includes the following provisions:

Development Guidelines

- Bluff top development should be visually compatible with the scale and character of the surrounding development and respectful of the natural scenic qualities of the bluffs. Structures should be sited and designed to minimize alteration of natural landforms. [p. 110]
- Bluff top developments should not contribute significantly to problems of erosion or geologic instability on the site or on surrounding properties. This includes activities related to site preparation and construction. [p. 110]
- The placement of shoreline protective works should be permitted only when required to serve coastal-dependent uses or to protect existing principal structures or public beaches in danger of erosion and when designed to eliminate or mitigate adverse impacts on shoreline sand supply. [p. 91]
- Roof and surface drainage should be directed away from the bluff edge or into special drainage facilities that have been equipped with energy dissipating devices to minimize erosion. A detailed drainage plan should be required for all new bluff top development. [p. 111]

In addition, the Sensitive Coastal Resources (SCR) Overlay provides development requirements for beaches and coastal bluffs. The SCR regulations are designed to ensure that new development protect public beaches from erosion, maintain geologic integrity of coastal bluffs and provide for physical and visual public access to and along the shoreline. For coastal bluffs, the ordinance specifies the permitted uses and development regulations. Specifically, the SCR ordinance states, in part:

a. No structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within forty (40) feet of any point along a coastal bluff edge, except for the following uses:

1. Essential bluff top improvements including but not limited to, a walkway leading to a permitted beach access facility; drainage facilities, and open fences to provide for safety and to protect resource areas.

[...]

3. Accessory structures and landscape features customary and incidental to residential uses; provided, however, that these shall be located at grade and at least five (5) feet from the

bluff edge. Such structures and features may include: walkways, unenclosed patios, open shade structures, decks, lighting standards, walls, public seating, benches, signs, and similar structures and features, excluding benches, pools, spas, garages and upper floor decks with load bearing support structures. [Emphasis added]

- b A bluff edge setback of less than forty (40) feet, but in no case less than twenty-five (25) feet, may be granted by the Planning Director where the evidence contained in the geology report (see Subsection E.1) indicates that: 1) the site is stable enough to support the development with the proposed bluff edge setback; and 2) that the project can be designed so that it will neither be subject to nor contribute to significant geologic instability throughout the anticipated lifespan of the principal structures. [...]

Additionally, specific findings of fact which must be supported by the information in the file include:

- a. The proposed development will be sited, designed and constructed to minimize, if not preclude, adverse impacts upon sensitive coastal resources and environmentally sensitive areas.
- b. The proposed development will not encroach upon any existing physical accessway legally utilized by the public or any proposed public accessway identified in an adopted community plan; nor will it obstruct views to and along the ocean and other scenic coastal areas from public vantage points;
- c. The proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces and/or flood and fire hazards.
- d. The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply. Shoreline protective works will be designed to be the minimum necessary to adequately protect existing principal structures, to reduce beach consumption and to minimize shoreline encroachment.
- e. The proposed development will not adversely affect the General Plan, the Local Coastal Program, or any other applicable adopted plans and programs.

The subject site is located on a blufftop lot located at the north end of the cul-de-sac of Princess Street where it meets Sprindrift Drive. The bluffs are steep and exist on both the north and west sides of the subject site. The existing residence is located on the flat part of the site close to the street frontage. The swimming pool and spa are proposed to be located west of the house in the rear yard. From the street frontage, access to the rear yard is gained from the south side of the residence where there is a gate. Beyond the gate there is a concrete walkway and steps which lead down in elevation to the back yard. As

one turns the corner of the house in the back yard there is a small flat lawn area immediately adjacent to the house. Grass and other vegetation then cascades down the south-facing and north-facing bluff face of the subject site. It is beyond the bluff edge on the west face of the coastal bluff where the proposed swimming pool and spa are proposed to be located. (ref.Exhibit #8). Also in the rear yard, on the north side of the residence, there is an improved at-grade concrete patio and a deck at the upper story of the residence. The shoreline below the site is a rocky shoreline and there is no existing physical access to this area due to the steepness of the bluffs. There are no existing seawalls or bluff retaining walls in the immediate coastal area.

Relative to geologic stability, the Commission staff's geologist has reviewed the proposed project and has visited the subject site with Commission staff. The Commission's geologist has concluded that from a geologic standpoint, the pool and spa could be constructed where proposed and specifically states the following:

[...] With regard to the bluff retreat rate and slope stability of the subject site, I concur that the dominant mode of bluff retreat at the site appears to be sea cave formation and collapse. The extensive sea caves at the subject site seem to be the dominant form of erosion, with relatively little erosion occurring on adjacent bluffs. As caves grow in width, they eventually fail, forcing a sudden, dramatic apparent retreat of the bluff. Long-term bluff retreat rates quoted within the Michael Hart report range from 10-15 feet over the last 75 years of observation, as measured from siltstones at the base of the sea cliff. In part of the subject area no measurable bluff retreat has occurred in the dense sands since erosion has principally been through sea cave expansion. I concur that these conclusions seem reasonable. Retreat of the upper portion of the sea cliff appears to be strongly influenced by surface drainage. The proposed development (which is on the bluff face per the Coastal Act definition) could tend to stabilize the upper bluff if appropriately constructed. Accordingly, the development should neither be subject to nor contribute to instability at the subject site. [...]

Thus, from a geotechnical standpoint only, the proposed development could be constructed in its proposed location and not be subject to significant risk or contribute to instability of the site. The LCP's bluff top development standards, however, address more than geologic hazards issues. They also seek to avoid landform alterations and other prominent development that would degrade the visual character of coastal bluffs. As stated in the findings for Substantial Issue which are hereby incorporated by reference (staff report dated 7/17/01), the City found that the development was located at the "nexus of a coastal bluff and coastal canyon above the Pacific Ocean." As such, the southwestern portion of the site was identified as a "coastal canyon" and not as a "coastal bluff". Thus, a swimming pool and spa that are required to observe a geologic setback on a *coastal bluff* were permitted by the City to be constructed on the face of a coastal bluff seaward of the upper termination of the slope that is typically considered the "bluff edge".

The La Jolla LUP establishes development guidelines for all bluffs taller than 10 feet and whose toe is or may be subject to marine erosion. [p. 109] The entire bluff along the applicants' property satisfies both of these criteria: it is well over 10 feet high and the toe is subject to marine erosion. The La Jolla LUP definition of coastal bluffs is consistent with the Commission's longstanding definition of what constitutes a bluff. Commission regulation Section 13577(h)(1) provides that coastal bluffs are those bluffs the toe of which is now or was historically subject to marine erosion. Because the entire bluff along the applicants' property satisfies the LCP's definition of a coastal bluff, the coastal bluff setback requirements apply to the applicants' entire lot.

The SCR Ordinance does not contain provisions to differentiate between a coastal bluff and coastal canyon; such a difference is detailed in the City's Coastal Bluffs and Beaches Guidelines. However, these guidelines, while utilized informally by the City, were not part of the City's LCP at the time this subject development was approved and the City improperly relied on them rather than the certified LCP (i.e., former municipal code). and thus are not the standard of review. The guidelines define a coastal canyon as follows:

Where a site is bounded on at least one side by a coastal canyon (a large, established regional drainage course that traditionally accepts runoff from offsite), the coastal bluff edge is defined as the portion of the site which drains directly to the ocean. The portion of the site which drains first to the canyon (landward of the drainage divide) is not considered to be a sensitive coastal bluff. [ref. Exhibit #7]

In order to assess the issue whether the site actually contains a portion of a coastal *canyon*, Commission staff visited the site. Upon site inspection by Commission staff, it appears that the "coastal canyon" that the City describes as part of the southern portion of the site is more accurately described as a small gully on the face of a coastal bluff that accepts drainage from a couple of home sites and the small street adjacent to the subject site. In addition, while it does accept some runoff from offsite, the Commission does not agree that the area should be classified as a "large established regional drainage course". Also, the "coastal canyon" does not outlet directly onto the beach, but outlets on the face of the coastal bluff on the subject site, where the toe is subject to marine erosion at all but the lowest tides. As can be seen in a photograph of the site taken by Commission staff (ref. Exhibit # 8), the toe of the slope is subject to wave action and marine erosion.

The Commission staff's geologist has further stated that under the Coastal Act definition of a bluff edge, the edge would be defined as the break in slope immediately southwest of the subject residence where the "downward gradient of surface increases more or less continuously until it reaches the general gradient of the cliff". The City's LCP (former municipal code) contains a similar definition as that cited in the Coastal Act.

Specifically, Section 101.0101.96.4 of the City's former implementation plan (municipal code) defines a coastal bluff edge as follows:

4. Coastal Bluff Edge. The upper termination of a coastal bluff. When the top edge of the coastal bluff is rounded away from the face of the coastal bluff, the edge shall be defined as that point nearest the coastal bluff beyond which the downward gradient of the land surface increases more or less continuously until it reaches the general gradient of the coastal bluff. In a case where there is a step-like feature at the top of the coastal bluff, the landward edge of the topmost riser shall be considered the bluff edge.

The Commission's staff geologist has also drawn an exhibit (reference Exhibit #6) that approximates the location of the bluff (dotted line) edge pursuant to the definition of bluff edge as defined in the California Code of Regulations which is essentially the same as that contained in the certified LCP. As can be seen from the exhibit, the proposed pool and spa would be located entirely beyond the bluff edge. Thus, based on the current standard of review the proposed improvements are thus proposed seaward of the delineated bluff edge on the face of the coastal bluff, which is inconsistent with the above-cited LCP provisions.

Relative to the fact that the current LCP does contain provisions that recognize and define coastal canyons (although not the standard of review for this project), the Commission does not agree with how the City has interpreted the guidelines. Although it must be recognized that the Coastal Commission approved the City's Land Development Code, along with its Coastal Bluffs and Beaches Guidelines (as an LCP amendment), which includes the definition of a coastal canyon, it was not the Commission's intent, when approving the coastal canyon definition in the guidelines, that it would be applied to the situation that arises on the subject site. Specifically, there are other portions of the coastal zone where the use of a "coastal canyon" definition would be more appropriately used and where the Commission would agree with its application. For example, in the northern part of La Jolla in the area known as the La Jolla Farms area, there are numerous inland canyons where residential sites are located. In many cases, the residential sites are located some distance from the shoreline and are clearly not "coastal bluffs" and the canyons could more easily be described as "large, established regional drainage course". Also, it was never the Commission's intent that the inclusion of a definition for "coastal canyon" in the guidelines, would allow development which is inconsistent with all other applicable LCP provisions. Because it was not the Commission's intent that the "coastal canyon" definition be applied to situations like the subject site, Commission staff will work with the City to refine the definition and include revisions, if needed, in a future LCP amendment. In any case, the Commission finds that the small drainage gully that exists on the site is not a coastal canyon, but instead is a coastal bluff, and as such, pursuant to the certified LCP, all new development must be setback an appropriate distance from the bluff edge. The proposed swimming pool and spa are being proposed on the face of the coastal *bluff*—and as such, are inconsistent with the certified LCP and must be denied.

As such, the Commission finds that the construction of the proposed swimming pool and spa with retaining wall seaward of the bluff edge and on the face of the coastal bluff is inconsistent with the certified LCP. While the Commission acknowledges the subject

site is highly constrained, construction of a pool/spa is not necessary to achieve reasonable use of the site. That has already been accomplished through the construction of the existing single family residence. In addition, there may be other alternatives to the proposed siting of a swimming pool on the site that could be done without alteration of natural landforms and without encroachment beyond the bluff edge. If the applicant desires to build a swimming pool on the subject site, it may be able to be sited on the northwest side of the home in an area that is already improved with a patio.

The proposed development is also inconsistent with the LCP provisions pertaining to views. The proposed development would result in the alteration of a natural landform and the subject site is highly visible from public areas to the south, including the Coast Walk Trail, a public trail along the bluffs leading up from a major public access point known as Goldfish Point above La Jolla Caves, which is just north of La Jolla Cove. The trail is used by members of the public for walking, jogging and sight-seeing. In addition, people use the ocean for swimming and kayaking in this area. A popular route with swimmers in the area is from La Jolla Cove to La Jolla Shores and back. Others swim out to different buoys that are located seaward of the Cove and back to the beach at the Cove. The subject site is highly visible from all these vantage points, not to mention from offshore boats, outside of the "boat free zone" etc. As can be seen from the photo of the site (reference Exhibit #8), there are no other visually prominent accessory structures as that proposed in the subject development and the placement of a swimming pool and/or spa on the face of the bluff would be out of character with the blufftop properties in this immediate area and could set an adverse precedent for construction of other structures on the bluff face on other sites.

Development of the proposed accessory structures on the face of the bluff would include significant alteration of this natural landform and raises concerns with respect to public views, inconsistent with the above cited policies and findings which require that blufftop development minimize the alteration of natural landforms which cumulatively degrade the natural scenic quality of the bluffs. Regardless whether the natural landform is a coastal bluff or a coastal canyon, these policies of the certified LCP are applicable to the proposed project because they specifically require that alteration of natural landforms be minimized. The area of the site where the proposed accessory improvements are proposed to be sited represents a natural landform as can be seen in Exhibit #8 referenced above. While the applicant is proposing screening of the structure with a decorated wall and landscaping, its location on the face of the coastal bluff is highly visible and will result in a significant degradation of the scenic quality of the area.

In summary, the Commission finds that the proposed location of the swimming pool and spa on the face of a coastal bluff cannot be found consistent with the certified LCP. Again, although the City determined this area to be a coastal canyon, the Commission finds that it is actually a coastal bluff because the toe of the slope is subject to marine erosion. The placement of accessory structures such as swimming pools and spas are not permitted beyond the edge of a coastal bluff and, in fact, are required to be set back a minimum distance of 25 ft. from the bluff edge. Therefore, given that the proposed location of the proposed swimming pool and spa on the face of a coastal bluff is

inconsistent with the bluff top development and public view protection policies of the certified LCP, the Commission finds that the proposed project must be denied.

2. Public Access. The proposed development raises concerns with regard to consistency with the public access policies of the Coastal Act and the certified LCP. Specifically, the following policies of the Coastal Act are applicable to the proposed project and state the following:

Section 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

(1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,

(2) adequate access exists nearby, or,

(3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway....

In addition, the certified La Jolla-La Jolla Shores LCP states the following:

La Jolla's relationship to the sea should be maintained. Existing physical and visual access to the shoreline and ocean should be protected and improved.

New development should not prevent or unduly restrict access to beaches or other recreational areas.

Section 30604(c) of the Act requires that specific access findings be made for any project located between the first coastal roadway and the sea. The project site is located between the ocean and the first coastal roadway (Princess Street). The subject site is at the terminus of Princess Street in the La Jolla community of the City of San Diego. The site is a natural promontory, bounded on the north and west by the ocean. The beach below the subject site (and to the south) is small rock/cobble beach bounded by steep bluffs that is only accessible at very low tides from the north (the nearest public access point is adjacent to the Marine Room, approximately ¼ mile to the north). There is no access to this beach from the south. Due to the existence of steep coastal bluffs and rocky

shorelines, the closest known access to the south of the site is at La Jolla Cove, some distance away.

As noted above, there have been a number of previous Commission actions regarding development on the subject site. Utilizing the public access and recreation policies of the Coastal Act, the Commission ultimately required that both lateral (from the toe of the bluff to the Mean High Tide Line) and vertical (from Princess Street down the bluff to the beach) public access easements be recorded as a condition of approval for allowing a substantial addition to the home (ref. Exhibit #4). Although it does not appear that the easements were ever recorded, the residential addition was nonetheless completed in an apparent violation of the Coastal Act. Resolution of the violation of the special conditions of the past coastal development permit will be pursued separately.

The proposed development is inconsistent with coastal development permit #F6760 approved by the Commission in that it would allow new development to encroach into an area that was required to be offered as a public vertical access easement pursuant to a special condition of said permit. The Commission's previous action required the applicant to record a 5 ft. wide vertical access easement (for public pedestrian use from sunrise to sunset and for emergency rescue access 24 hours a day) along the southern property boundary from Princess Street to the beach. Although it appears this easement offer has never been recorded as required, in an apparent violation of the coastal development permit, approval of the currently proposed development in this area would allow encroachment into the accessway. The proposed swimming pool and spa are to be located to the west of the existing home in close proximity to the southern property boundary. A proposed retaining wall to support these improvements (as they are proposed on the face of a slope), is proposed extending to approximately 3 ½ ft. of the southern property boundary. Thus, the proposed development would encroach directly into the previously required easement area.

Additionally, the City's approval of the subject proposal will reduce the access easement to 3 ½ ft. in width and eliminate use by the general public, making it instead only available to lifeguards for emergency access. The City found that access by the public in this area was not safe, nor appropriate for stability reasons. However, project opponents have stated that this area has been used by the public for many years to access the beach and have presented evidence to support prescriptive use. The proposed development is inconsistent with the previous Commission action which required public access easements on the subject site. As cited in the previous finding, given that the proposed location of the improvements on the face of a coastal bluff are inconsistent with the blufftop setback policies of the certified LCP and public access and recreation policies of the Coastal Act, the Commission cannot approve the proposed development. In summary, the Commission finds that the proposed development is inconsistent with the public access policies of the Coastal Act and the certified LCP and therefore must be denied.

4. No Waiver of Violation. Although development has taken place prior to the submission of this permit request, consideration of the request by the Commission has

been based solely upon the certified City of San Diego LCP and the public access policies of the Coastal Act. Commission action upon the permit does not constitute a waiver of any legal action with regard to the alleged violation of the Coastal Act that may have occurred; nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal development permit.

5. California Environmental Quality Act (CEQA). Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit to be supported by a finding showing the permit to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As stated previously, and incorporated herein by reference, the development as proposed would be inconsistent with the geologic setback requirements of the City's former implementation plan and with the policies of the certified La Jolla-La Jolla Shores LCP Land Use Plan which address blufftop development and protection of public access. The proposed improvements would not only alter natural landforms, they would also result in visual impacts from public vantage points and scenic areas. In addition, there are feasible alternatives to the proposed development. These feasible alternatives include siting the swimming pool and spa on the northwest side of the residence without encroaching beyond the bluff edge onto the face of a coastal bluff. Although there is an existing improved patio area at this location, it is feasible to replace this area with a swimming pool and spa. This alternative would eliminate all geologic impacts, alteration of natural landforms and would minimize adverse visual impacts associated with the proposed development.